



**State of New Hampshire**  
Public Employee Labor Relations Board

**United Steelworkers of America**

v.

**Manchester Water Works**

**Case No. G-0058-25**

**Decision No. 2015-230**

**Appearances:**

Vincent A. Weners, Jr., Esq.,  
Manchester, New Hampshire for the Complainant

Thomas I. Arnold, III, Esq.,  
Deputy City Solicitor  
Manchester, New Hampshire for the Respondent

**Background:**

On April 8, 2015, the United Steelworkers of America (Union) filed an unfair labor practice complaint, alleging that the City of Manchester Water Works (City) has failed to implement an arbitration award in violation of RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter); (c)(to discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization); (g)(to fail to comply with this chapter or any rule adopted under this chapter); (h)(to breach a collective bargaining agreement); and (i)(to make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law,

regulation or rule). The Union requests that the PELRB order the City to implement the arbitration award, pay the Union's costs and attorney's fees, and provide other relief as appropriate.

The City denies the charges. According to the City, it has satisfied its obligations under the arbitration award and the complaint should be dismissed.

This case was originally scheduled for hearing on May 12, 2015 but the hearing was continued several times at the parties' request. On August 25, 2015 the undersigned held a hearing at which time the parties presented evidence to support their respective positions, and both parties filed post-hearing briefs by the September 28, 2015 deadline.

#### **Findings of Fact**

1. The City of Manchester is a public employer within the meaning of RSA 273-A, and the Union is the exclusive representative of certain employees of the Manchester Water Works Department.

2. The parties' October 15, 2013 to June 30, 2015 Collective Bargaining Agreement (CBA) provides for a "Night Shift Premium" (NSP) in Article 15 for bargaining unit employees who are "assigned to a permanent night shift or on a rotating basis to the night shift..." ("night shift employees").

3. The CBA includes final and binding arbitration as the last step of the Article 29 grievance procedure.

4. From the 1970's until the filing of a Union grievance in early 2014, the City paid night shift employees the NSP even when they were scheduled to work the day shift. For reasons that were not reviewed at the hearing, City pay records do not necessarily reflect the rescheduling of night shift employees to the day shift during time periods relevant to this case.

5. On February 27, 2014 the Union filed a grievance claiming that the City had violated the CBA by paying the NSP to night shift employees who in fact had worked the day shift. The City denied the grievance, and the parties proceeded to grievance arbitration.

6. David Paris was the Director of the Manchester Water Works at the time of the arbitration proceeding.<sup>1</sup> At the arbitration hearing, he had not carefully reviewed and researched the possible overpayment to night shift employees who worked the day shift, but he estimated that the greatest overpayment was to employee Breton in the approximate amount of \$800 per year.

7. At the arbitration hearing the City argued, among other things, that there could be no remedy because “it is not possible to determine the exact amount of the overpayments.”

8. The arbitration decision, dated October 28, 2014, sustained the Union’s grievance.

The decision provides as follows:

The Employer has acknowledged a violation of Article 15. The Employer has also agreed to abide by Article 15 going forward. The question, then, is one of Remedy for the violation of the Article.

Notwithstanding the Employer’s good intentions, it does not have the option of ignoring the terms of its Agreement with the Union. The City of Manchester must make a good faith effort to secure reimbursement from Breton, Carignan and Smith for the Night Shift Premium overpayment in the amounts that have been determined by Director Paris.

The arbitrator did not list or otherwise make a finding as to the exact overpayment amounts.

9. After the arbitration award issued, Director Paris completed a more detailed review of the overpayment amounts. However, his computations were still hampered by City pay records, which indicated that the three night shift employees were scheduled for the night shift, and not the day shift. This documentation suggests that the involved night shift employees were in fact entitled to receive the NSP, even though the City and the Union agree this was not the case. By

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<sup>1</sup> Mr. Paris retired in the spring of 2015.

making certain assumptions, Director Paris estimated that Breton had been overpaid by approximately \$684.00, and Carignan and Smith by approximately \$30.40 each.

10. Director Paris then wrote letters to Carignan, Smith and Breton (Union Exhibit C - November 3, 2014 letters) in which he summarized the arbitration award and his overpayment calculation. He requested that each reimburse the City of Manchester in the specified amounts. Carignan reimbursed the City as requested, but Smith and Breton did not. He did not ask for reimbursement for more than a one year period because of the passage of time and the difficulties in computing the actual overpayment amounts.

11. After he provided the November 3, 2014 demand letters to Carignan, Smith, and Breton, Director Paris consulted with the City Solicitor's Office and Human Resources about how to proceed. The consensus was that further action would not be appropriate given the uncertainty about the overpayment amounts and, presumably, the approximate amounts actually at issue.

12. Union evidence on the overpayment amount was not accompanied by the same equivocation as that provided by Director Paris, and Union witnesses determined that, for example, Breton was overpaid \$984.20 a year over a four year period, for a total of \$3,784.80. This is the amount the Union believes the City should be attempting to collect from Breton. However, the Union, like the City, does not have the benefit of accurate pay records to determine the actual amount of the overpayments.

13. It does not appear that Carignan, Breton and/or Smith participated in the arbitration, and none of them were called as a witness at the hearing in this case.

## Decision and Order

### Decision Summary:

The City did not improperly fail to implement the arbitration award as the Union has charged given the circumstances of this case. The Union's complaint is dismissed.

### Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

### Discussion:

Under the Public Employee Labor Relations Act, the City is obligated to implement final and binding arbitration awards issued pursuant to the collectively bargained grievance procedure, subject to certain exceptions that are not applicable in this case. The award in this case explicitly requires the City to make a good faith effort to obtain reimbursement of wage overpayments to three employees. However, the award does not mean that the City must continue its pursuit of reimbursement without due consideration of possible problems with the claim. In other words, the City still has the right to balance the possible benefits of additional collection action with the costs of those efforts, provided that it does so in good faith. I find there is insufficient evidence to prove that the City did not act in good faith in evaluating the reimbursement claims and how to proceed.

The possible benefits of further collection efforts appear to be negligible at best, as there are significant proof problems as to the actual amount of the overpayments, something the City openly discussed in the arbitration proceeding. On the other hand, the costs of further collection activity are high (i.e. time and expense, including litigation) relative to the approximate amounts in controversy and the likelihood of success (which is low, with or without formal litigation). It is difficult to see how these costs can reasonably be justified in the circumstances.

I recognize that the Union is very confident in its overpayment calculation. However, I believe the Union's exuberance is somewhat misplaced given the paucity of reliable and accurate City pay records. Additionally, the arbitrator expressly stated that Director Paris (and not the Union) should have responsibility for calculating the overpayment amounts. This necessarily requires that Director Paris' judgments as to the calculation (or best estimate) of the overpayment amounts, the difficulties in computing the overpayment, and reservations about proceeding any further with collection efforts, are entitled to deference and priority over the Union's assessments unless there is evidence that Director Paris has not acted in good faith.

Based upon the evidence adduced at hearing there is insufficient evidence to prove that Director Paris, or the City, has failed to act in good faith. On the contrary, I believe the evidence reflects that the City acted reasonably and in good faith in initially approaching the three employees with a formal demand letter, issued soon after the parties received the arbitrator's award. At the same time, the City quite properly recognized the proof problems and other difficulties associated with any further action that might still be taken against Smith or Breton and made a reasonable and informed judgment that it could not justify the pursuit of reimbursement any further.

I therefore reject any claim that the City has failed to act in good faith or otherwise has not implemented the arbitration award in violation of RSA 273-A:5, I (a), (c), (g), (h), or (i). The Union's complaint is dismissed.

So ordered.

Date: 10-9-2015

  
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Douglas L. Ingersoll, Esq.  
Executive Director/Presiding Officer

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